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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 1010

PACIFIC MARITIME ASSOCIATION,

Petitioner,

vs.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards, SAILORS' UNION OF THE PACIFIC, Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers Association, and Marine Cooks and Stewards Union, and UNITED STATES OF AMERICA,

Respondents.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI

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Petitioner respectfully requests this Court to consider two reasons for granting the writ of certiorari in addition to those set forth in the original petition.

A. *The Judgment Below Subverts the Policy of the Taft-Hartley Act to Create Conditions for Effective Collective Bargaining During the Period in Which the National Emergency Injunction is in Effect.*

In our original petition we argue that Sections 206 to 210 of the Taft-Hartley Act embody a Congressional policy to provide for full production and normal operations during the period in which an injunction issued pursuant to

Section 208(a) is in effect and that the Court of Appeals erred in finding this policy outweighed by what it considered to be a Congressional direction to terminate "all vestiges of judicial restraint on the 80th day . . ." (App. p. 47).[1] The District Court also rested its decision to issue the supplementary order upon a second and separate policy sought to be achieved by the Taft-Hartley Act. We submit that this policy demonstrates a legislative purpose quite inconsistent with the Court of Appeals' mechanical view that the Congress intended an inflexible ban upon any judicial action after the 80th day, and that as applied to the circumstances of the maritime industry the mechanical view of the court below entirety frustrates the Congressional purpose.

1. *The Purpose of the Congress.* The conditions that must be found to exist before an injunction may issue under Section 208 relate solely to the existence of a situation which, if permitted to continue, will imperil the national health or safety—to the existence, in essence, of a national emergency. Once the necessary statutory findings have been made, the District Court is required to issue the injunction, *Steelworkers* v. *United States*, 361 U. S. 39. The 80-day period during which the injunction was to continue, commonly known as the "cooling-off" period, was provided to afford the parties the opportunity to resume the processes of collective bargaining under the pre-existing conditions of employment and in an atmosphere permeated with the pressure of public opinion upon both parties to reach a voluntary settlement.

Implicit in this statutory arrangement is a Congressional determination that conditions conducive to genuine and effective collective bargaining be maintained during

[1] References to the appendix are to the appendix to the original petition for writ of certiorari.

this period and that the existence of the injunction is not to alter radically the respective bargaining positions of the parties. There was never any thought that the injunction should operate to provide an additional weapon either to the employer or to the employees. For example, a provision in the injunction that the employees should return to work at half pay would clearly be invalid. Similarly, a provision in the injunction issued in the case at bar that the ship owners must limit the carriage of cargo to half that ordinarily carried would be no less invalid.

Much less could the Congress have intended that the existence of the "cooling-off" period serve in itself to introduce new and serious controversies between the parties, or that where there was one congeries of insoluble disputes at the beginning of the 80-day period there should be two at its end.

2. *The Application Here.* The Court of Appeals' decision here strikes from the supplemental order of the District Court all assurance that cargo loaded in foreign ports for discharge in the United States will be unloaded from the vessels. In obvious and necessary consequence, shippers are unwilling to commit their cargoes to any vessel affected by this strike and injunction if it arrives after June 30. As stated by the cross-petitioning union in No. 1017 (p. 15), vessels which started out during the 80-day period will be arriving from time to time up until the middle of September. Each, obviously, will have little or no cargo aboard. Each voyage will, with full voyage cost and half-voyage freight, be a financial disaster.

As the ships arrive new controversies will be generated between employer and employee. If the unions picket the vessel the seamen aboard are, in our view, guilty of mutiny and desertion if they join with their union before discharge of cargo and the picketing union is guilty of in-

ducing a breach of the Shipping Articles and of the prohibitory statutes (see petition in No. 1017, p. 12; *infra*, p. 8). If, as we should anticipate, the unions are of a different view, there immediately arises new controversy and new litigation. The "cooling-off" period is, by automatic termination of the courts' powers on the 80th day, converted into a "heating-up" period. A labor dispute that was insoluble when the injunction issued is made doubly so when it terminates.

The decision that the court cannot after the 80th day enforce the Shipping Articles which it protected as a part of the status quo in its original injunction thus reaches back both to subvert that injunction and to destroy the status quo. So far as the employers are concerned, the holding of the Court of Appeals that the District Court may not protect the integrity of its injunction by an order affecting the few days at the end of a voyage has the practical effect of modifying the basic injunction for much if not all of the period in which it was in terms effective.

The District Court found it necessary to exercise its authority to enter such other orders as may be appropriate (authority which, in our view, the Court possesses independently of the express statutory grant in Section 208(a)(ii), see, *B'hood of Locomotive Engineers* v. *Mo. K. T. Ry.*, 363 U. S. 528) in order to restore the status quo, so that the grant of the injunction would not, of itself, operate to impose enormous losses upon one of the parties, with a consequent pressure to capitulate, while leaving the other party relatively untouched. It said:

> "Without the necessary assurances of returning to the port of ultimate destination and the discharge of the cargo after the 80 days, the injunction would provide merely a selective or partial resumption of work. Ships which could not complete their voyages

within the 80 days would, for practical and realisite purposes, remain unproductive. Many would not sail at all—mindful that round-the-world voyages approximate 120 days in duration, outbound and inbound. Many would be forced to return on the last leg of the voyage without productive or any cargo for the reason that shippers would be reluctant to hazard the ultimate fate of struck cargo at the point of destination.

. . . . . .

"It is significant at this juncture to note the attitude of the cargo shippers in the light of the strike sanctions. It is elemental that without cargo and passengers the owner-operators, if forced to sail the vessels under the mandate of the injunction, would merely provide the seamen with a pleasure jaunt. Such could not be the intent and purpose of the benign legislation that this Court is asked to interpret." (App. p. 25.)

The question of the scope of the District Court's authority to issue supplementary orders in connection with a Taft-Hartley injunction is, we urge, one of importance, deserving the consideration of this Court. It is fundamental to the operation of the Act in the maritime industry, where a voyage can realistically be commenced only if the conditions of its termination are predictable. It is, unhappily, the maritime industry where the Taft-Hartley injunction has had its most frequent use. As both petitioner and respondent have pointed out, the alternative is between immediate review of the Court of Appeals' judgment and no review at all, since all agree that the issues will be mooted before the case can be heard at the 1962 Term.

B. *The District Court Has Jurisdiction to Enter the Supplementary Order Independently of the Jurisdiction Conferred by Section 208 of the Taft-Hartley Act.*

The District Court recognized that the injunction it had issued, if unaccompanied by the supplementary order, would be "in complete conflict with the mandate of maritime law and the traditions of the sea," and that the assertion of the right to "walk off the ship at the first American port, leaving the cargo and ship to be strike-bound for an indefinite period of time, is contrary to the traditions, customs and practices long held in reverence under elementary principles of maritime law." And in support of the issuance of its supplementary order, the District Court relied on cases such as *B'hood of Locomotive Engineers* v. *Mo. K. T. Ry.*, 362 U. S. 528, and *Textile Union* v. *Lincoln Mills*, 353 U. S. 448, which treat of the equity jurisdiction of the Court and not the special grant of jurisdiction found in Section 208. It seems clear enough that the District Court regarded the supplementary order as having been issued, at least in part, in reliance upon its general equity jurisdiction.

1. *General Jurisdiction.* It seems to us plain enough that an application for such an order, if made in a separate proceeding, would involve a suit arising under the laws of the United States governing the relationships between seamen and shipowners. See, *B'hood of Railway Trainmen* v. *N. Y. Cent. R. Co.*, 246 F. 2d 114 (C.A.6); *Toledo P. & W. RR.* v. *B'hood of Railway Trainmen*, 132 F. 2d 265 (C.A.7), rev'd on other grounds, 321 U. S. 50; *Telegraphers* v. *Chicago & N. W. R. Co.*, 362 U. S. 330, 364 (dissenting opinion). The fact that the application for an order was made by petitioner in an action instituted by the United States rather than by the petitioner itself can hardly be thought to deprive the Court of the power to act.

Nor can there be much doubt, apart at least from the Norris-LaGuardia Act, that a court of equity has power to enjoin a breach, or inducing a breach, of the Shipping Articles to prevent irreparable and large injury to steamship operators, shippers and consignees.

2. *The Norris-LaGuardia Act.* This Court, in *Brotherhood of Railroad Trainmen v. Chicago River & I. RR. Co.*, 353 U. S. 30, held that the Railway Labor Act provisions dealing with the adjustment of minor disputes evidenced a Congressional intent to preclude resort to a strike which would frustrate the purposes of the Act to establish a system of compulsory arbitration of such disputes. The Norris-LaGuardia Act (29 U.S.C. Sec. 101, *et seq.*) bars against injunctions was therefore not applicable, since the strike would amount to "a plain violation of a basic command of the Railway Labor Act 'adopted as a part of a pattern of labor legislation.' 353 U. S. 30, 42." *Telegraphers v. Chicago & N. W. R. Co.*, 362 U. S. 330, 339.

The historic pattern of legislation governing the relationships between seamen and their employers is far more detailed and comprehensive than anything encountered in other industries. On the one hand this reflects a policy of affording specialized protections to seamen[2] and on the other a recognition of the fact that undivided authority of the master and strict discipline must obtain where "the lives of passengers and crew as well as the safety of ship and cargo are entrusted to the master's care." *Southern S. S. Co. v. Labor Board*, 316 U. S. 31, 38.

[2] For example, Federal statutes and applicable regulations require that any vessel that sails carry an adequate crew (46 U.S.C. Sec. 672). The number of seamen and specific ratings is specified in the vessel's certificate of inspection issued by the Coast Guard in accordance with the applicable law (46 U.S.C. Sec. 672). A vessel can proceed to sea only if the required number of seamen and the appropriate ratings are aboard (46 U.S.C. Sec. 676). There are elaborate requirements with respect to such matters as medicines, clothing, heat, hours and watches, wages and return transportation to this country (46 U.S.C. Sec. 651-692, 1131).

As a part of this comprehensive regulation of the employment relationship, shipping articles must be executed by the seamen for most foreign voyages (46 U.S.C. 564, 565, 575), and it has been the regular and consistent practice for shipping articles to be signed for all voyages covered under the contract between PMA employers and the seamen represented by respondent unions (R. 78). The form of the shipping articles is specified by statute (46 U.S.C. Sec. 713, Table A) and the form of the "discharge"—giving evidence that the employee has fully performed his duties under his articles and that the employer in return has fully performed his obligations to the seamen—is also prescribed by law (46 U.S.C. Sec. 713; Table B). The time that employees must be paid their wages is set forth by statute (46 U.S.C. 591).

The shipping articles prescribed by law impose a specific obligation upon the seaman to comply with the lawful commands of the master and of his superior officers during the term of the articles. Penalties are imposed upon seamen who fail to comply with such lawful orders of the master (46 U.S.C. Sec. 595-701; 18 U.S.C. 2196), and penalties are imposed upon seamen who are guilty of mutiny or desertion or of refusing to go to sea with the vessel, quitting the vessel without leave, etc. (46 U.S.C. 701; 18 U.S.C. Sec. 2192, 2193). The employer may defer the payment of a substantial part of the compensation of any seaman until 24 hours after the cargo has been discharged or within 4 days after the seaman has been discharged, whichever first happens (46 U.S.C. 596).

This Court has held that a strike by seamen while away from their home port, even if safely docked elsewhere, would constitute mutiny, *Southern S. S. Co.* v. *N.L.R.B.*, 316, U. S. 31, and lower courts have held that such action would also constitute desertion, calling forth the penalties pre-

scribed therefor, *Clayton v. Standard Oil of N. J.*, 42 F. Supp. 734 (S.D. Tex.); *The Youngstown*, 110 F. 2d 968 (C.A. 5).

These several statutory provisions look toward the completion of a voyage and the unloading of cargo, and express the objective of the Congress to achieve the orderly completion of a voyage once begun. They reflect in this regard traditions of the sea of very long standing. See, Norris, *Law of Seamen* (1951, Sec. 176, p. 187). A strike designed to prevent compliance with the shipping articles, and to breach the term of employment fixed under Congressional sanction, is just as direct a threat to the statutory governance of maritime employment as was a strike designed to subvert the purposes of the Railway Labor Act. The Railway Labor Act fixed the pattern by which disputes were to be settled; the seamen statutes and maritime customs fix the time when the labor dispute may arise. We submit, then, that the District Court had power to issue its supplementary order upon the application of petitioner without regard to the grant of jurisdiction of Section 208 of the Taft-Hartley Act. Nothing in that Act withdraws jurisdiction enjoyed prior to its adoption.

3. *The Issue Can and Should Be Decided Here.* Although this basis for the entry of a supplementary order was not part of the pleadings below, this Court may, under its prior decisions, adopt it as a ground for reversal of the Court of Appeals and for reinstatement of the supplementary order issued by the District Court. See the cases cited at pp. 837 and 838 of Robertson & Kirkham, *Jurisdiction of the Supreme Court of the United States* and *Ecker v. Western Pacific R. Corp.*, 318 U. S. 448, 489. The issues here are of critical importance to a vital industry of the United States and to its employees, and the questions

should be decided on the basis of whether the jurisdiction of the District Court exists and not upon whether the proper formula has been employed in invoking that jurisdiction.

For the reasons given above as well as those originally set forth, this Court should grant the writ of certiorari prayed for by petitioner.

Respectfully submitted,

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